Supreme Court, U.S.
FILED

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No.

IN THE

Supreme Court of the United States

MACDONALD LETTER SERVICE , INC.,
Petitioner

v.

MICHAEL MARSHALL, SECRETARY OF THE IOWA SENATE AND MARGARET THOMSON, CHIEF CLERK OF THE IOWA HOUSE OF REPRESENTATIVES,
Respondents

On Petition For Writ Of Certiorari
To The Supreme Court of Iowa

PETITION FOR WRIT OF CERTIORARI

TERRANCE E. SWANSON
Counsel of Record
SWANSON LAW OFFICE
520 35TH STREET
DES MOINES, IOWA 50312
515-274-8679

Questions Presented for Review

Petitioner was denied standing to pursue its action in Equity upon Respondents Motion to Dismiss. The District Court's order granting dismissal was affirmed on appeal. Request for Further Review was denied by the Supreme Court of Iowa.

Questions for Review:

Is it contrary to the First and Fourteenth Amendments to the U.S. Constitution for a State Court to deny standing to sue ***in Equity*** to a party who is a qualified winning bidder in a public competitive bidding process but was not awarded the contract?

Is the granting of a Motion to Dismiss ***in an Equity action*** simply because the Petitioner is an unsuccessful bidder in a public bidding process, an unconstitutional denial of Due Process and the right to petition the government for redress of grievances?

PARTIES TO THE PROCEEDINGS

All parties to this case are listed on the cover of this petition.

MacDonald Letter Service, Inc. is a Corporation organized under the Laws of the State of Iowa and is family owned and has no parent company nor is it part of any holding company.

Opinions and Orders Entered by the Courts in this Case*

10 March '03	Order Granting Motion to Dismiss	Iowa District Court for Polk County - Judge Sherman Phipps
12 June '03	Expanded Opinion re: Granting State's Motion	Iowa District Court for Polk County - Judge Sherman Phipps
14 April '04	Order Affirming District Court's Granting of State's Motion to Dismiss	Court of Appeals of Iowa - Zimmer, Miller and Hecht
30 July '04	Order denying further review	Supreme Court of Iowa – Louis A. Lavarato, Chief Justice

*Presented in Appendix

I. Basis for Jurisdiction

a. The order sought to be reviewed in this petition was entered on April 14, 2004 by the Court of Appeals of Iowa.

b. Petitioner filed a timely Application for Further Review with the Supreme Court of Iowa.

c. Further review of the case was denied by the Supreme Court of Iowa by order entered on July 30, 2004.

d. Petitioner believes that the circumstances of this case has denied him due process of law and denied him the right to petition the Government of the State of Iowa for redress of grievances as provided for in the First and Fourteenth Amendment to the U.S. Constitution. Petitioner asserts that such denial of due process in this circumstance raises an important constitutional question pursuant to Supreme Court Rule 10(3).

e. Because the actions of the State Court are not based on statutory authority nor is the Petitioner's suit in Equity specifically based on a statutory provision; and because the Attorney General of the State of Iowa is the Attorney of record for respondent, no special notice is required pursuant to Supreme Court Rule 29.4.

II Case Statement

There are no facts in dispute in this case.

Case History Summary:

Petitioner is a family owned company in Des Moines, Iowa, that has been incorporated since 1960. Over the years it has successfully provided printing services to the Government of the State of Iowa and the general public including printing services to the Iowa Legislature substantially identical to the service contract in dispute.

In the Fall of 2002 the Respondents, on behalf of the State of Iowa Legislature, sent out a "Request For Bids" (RFB) for printing services to cover four or more legislative

sessions (four years). Petitioner, at some expense of time and materials, responded with a bid that was substantially under the "winning" bid. Upon learning the circumstances of the bid that "won", petitioner requested reconsideration. Upon rejection of that request, Petitioner filed suit in the Fifth Judicial District Court, Polk County Iowa.

Assistant Iowa Attorney General Grant Dugdale filed a Motion to Dismiss. After a hearing, at which no record was made, Judge Sherman W. Phipps granted the Motion to Dismiss. On March 19, 2003, Petitioner filed a timely Motion to Reconsider and Enlarge Findings. On June 12, 2003 the Court found Petitioner's motion appropriate and , essentially, reiterated its former ruling with some expanded discussion. On June 18, 2003 Petitioner filed a Notice of Appeal. On April 14, 2004 the Iowa Court of Appeals affirmed the District Court's Order granting Respondent's Motion to Dismiss.

Petitioner made timely Application for Further Review of the Court of Appeals of Iowa opinion. On July 30, 2004, the Supreme Court of Iowa denied Petitioner's Application for Further Review. This is the Court of Last Resort in the State of Iowa.

When the Federal Question was First Raised:

The constitutional question was first raised on Appeal after the State's Motion to Dismiss was granted. Although Iowa R. App. P. 6.4 requires that actions in equity be reviewed de novo, the Court of Appeals refused to review the constitutional question on Appeal. This is clear error.

As a matter of logic, the issue of denial of Due Process and the right to Petition the Government for Redress of Grievances does not arise until the Motion to Dismiss is granted. One could argue, hypothetically, that to grant the motion would deny Petitioner his Constitutional Right to Petition the Government for Redress of a Grievance but legal

precedent and scholarship seemed clear that the Motion would be denied. The issue became real and not hypothetical when the Court granted the motion. Thus the appeal petition was the first realistic opportunity to argue the issue.

The Basic Issue of Law and Equity:

Whether or not Petitioner should prevail on the merits is not yet at issue in this case. By granting the State's Motion to Dismiss, the District Court closed the doors of the Courthouse to Petitioner.

Petitioner readily concedes that, as an unsuccessful bidder in a public bidding process, he has no standing to bring an action ***at law***.

> "...another reason an unsuccessful bidder has no standing to seek monetary damages is that this would be contrary to the public interest the bidding laws were designed to protect, since it would twice penalize taxpayers by compelling them to pay not only the excess over what they would have paid if the contract were properly awarded, but also the amount of profit lost by the contractor whose bid was wrongfully rejected." Garling Construction, Inc. v City of Shellsburg, 641 N.W. 2nd 522-523 (Iowa 2002)

To bring an action in Equity when the bidding process stinks requires a certain element of public spirit and desire to set things aright. Equity brings no hope of money damages but merely a hope of future fairness. This was an

action in equity![1] It is not surprising that there is little or no precedent available on point.

The Court of Appeals stated "...our Supreme Court has concluded an unsuccessful bidder lacks standing to bring an action in equity." [Court of Appeals Opinion, pg 3, see Appendix] The cases cited in the ruling simply do not say what the Court of Appeals say they say. *Elview Const. Co., Inc. v. North Scott Community School Dist. 373 N.W.2d 138* and *Garling Construction, inc. v City of Shellsberg, 641 N.W. 2nd 522 (523-525) (Iowa 2002)*. Nowhere in these Actions at Law can we find any legal authority for the statement by the Court of Appeals quoted above. Nor would they constitute controlling legal authority if they did since neither are actions in Equity.

Reasons to Allow this Writ:

The Petitioner does not seek damages and the taxpayer can only benefit from requiring that abusive bureaucrats follow reasonable procedures once they have invoked them. We are simply asking the Courts to evaluate the merits of our case. We seek no specific remedy other than some type of reasonable and equitable relief that we believe is within the power of the Court to provide.

The Iowa Courts, by granting the State's Motion to Dismiss, have specifically refused to review this case in the light of the Constitutional Issues raised on Appeal.

It seems obvious to us that if Petitioner has no standing at Law [for understandable reasons] and has no standing in Equity (contrary to reason and logic) then Petitioner is,

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[1] "Denial of standing to an unsuccessful bidder does not mean violation of a bidding statute will necessarily go unchallenged. **An injunction action, mandamus, or declaratory judgment might still be available.**" (emphasis added) *See* Annotation, 65 A.L.R.4th at 99

arguendo, denied any avenue to petition his government for redress of grievances contrary to the Constitution provisions cited. *U.S. Const. amend. I*[2] *and Iowa Const. art I § 20*[3].

These basic constitutional provisions permeate our legal system. The decision not to address the Constitutional issue by the Court of Appeals is bound up with the decision to ignore the fact that Petitioner has been denied any standing whatsoever despite considerable legal scholarship to the contrary. Restricting consideration of constitutional issues in this motion to dismiss an Equity case is error compounding error.

Petitioner respectfully requests the opportunity to be heard on the simple question; is the denial of standing to an unsuccessful bidder in a public bidding procedure in a ***Petition in Equity*** an unconstitutional denial of due process?

TERRANCE E. SWANSON
Counsel of Record
520 35TH STREET
DES MOINES, IOWA 50312
515-274-8679

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[2] Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

[3] Right of assemblage--petition. SEC. 20. The people have the right freely to assemble together to counsel for the common good; to make known their opinions to their representatives and to petition for a redress of grievances.